IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

AMERICAN WASTE MANAGEMENT AND RECYCLING, LLC. Plaintiff, v. **CEMEX PUERTO RICO; CANOPY ECOTERRA, XYZ INSURANCE COMPANIES.** Defendants.	CIVIL NO.: 07- 1658 (JAF) BREACH OF CONTRACT; COLLECTION OF MONIES; and DAMAGES. JURY TRIAL DEMANDED

AWMR'S MOTION REGARDING VIOLATION TO COURT ORDER AND REQUESTING SANCTIONS

TO THE HONORABLE COURT:

NOW APPEARS Plaintiff **AMERICAN WASTE MANAGEMENT AND RECYCLING, LLC,** and through the undersigned attorneys, respectfully **STATES, ALLEGES** and **REQUESTS** as follows:

On September 24, 2007, the Court issued an Order whereby it paralyzed all work at the CEMEX site, and, among others, held that "AWMR SHALL be permitted to remove all of its rental and other equipment belonging to AWMR and be allowed full access to the site in order to inspect and remove the same." (Docket No. 37). Because of the urgency in the removal of certain equipment, AWMR immediately made arrangements to remove some of the equipment at the site. On September 26, the moving coordinator met with Mr. Ramiro Lozano, Manager of the CEMEX plant, who in fact authorized the removal of the equipment after being shown the Court order. The next day, after the arrangements had been made and the truckers arrived at the site, they were

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informed that Mr. Lozano did not authorize removal of the same, in spite of this Court's clear order to the contrary. *See Exhibits 1 and 2* to this motion. There was no justifiable reason not to abide by the Court's Order in this effort to retrieve rental equipment, which belongs to third parties and had been leased by AWMR. Surely, the removal of AWMR cranes and equipment that is simply lying idle at the site does not require anything more than the previously coordinated effort with Mr. Lozano, which was effected.

A. Repeat offender

As the Court might note, these facts seem eerily familiar: CEMEX gives permission, then withdraws it. This is the exact same scenario that occurred in June before this litigation commenced, when access was granted to remove the loaded containers property of AWMR at the CEMEX site, and later in August when the inventory and inspection took place in Ponce. Time and again, AWMR has had to repeatedly expend moneys and efforts making arrangements that will result in further lost profits, since CEMEX will then either outright cancel or will make the endeavor increasingly onerous.

As AWMR has already informed the Court, many thousands of dollars were lost when the eight containers currently on hold at the CEMEX installations were initially released and arrangements were made to transport them, including bookings that were made on cargo ships departing from Puerto Rico and sales to foreign clients. Said authorization was later revoked, resulting in increased losses, both monetary and reputation-wise. Then in August, during the inventory and inspection that took place, and when all attorneys and the parties were present at the site in Ponce (except CEMEX counsel, that is, who did not attend that day) the inspection was suddenly cut short and access to equipment belonging to AWMR located at the so- called "transport site" was not allowed. At every step of the way, CEMEX has obstructed progress in this case, and this last flagrant violation of the Court's Order and authority is no different. CEMEX purports to be a neutral party in this case, yet in fact their actions and continued obstruction belie that assertion.

In its motion requesting the Order that the Court granted, AWMR stated that at that time, it did not put past Defendants "to bypass any preservation order the Court might issue". (docket No. 28.) Unfortunately, that scenario has already become a reality. ***AWMR regrets that it has to, yet again, bring this matter to the Court's attention but CEMEX's lack of compliance with the clear Order from this Court and this latest challenge to the Court's authority must surely merit some sanction.***

As the Court is well aware, it has the inherent power to sanction the parties as it sees fit and depending on the circumstances of each case. *See Santiago-Díaz v. Laboratorio Clínico y De Referencia Del Este*, 456 F.3d 272, 275 (1st Cir. 2006)(" It is black-letter law that district courts have wide authority to fashion sanctions that are appropriate to the circumstances"); *Rosario-Diaz v. Gonzalez*, 140 F.3d 312, 315 (1st Cir. 1998); and *Denmark v. Liberty Life Assur. Co. Of Boston,* 481 F.3d 16, 40 (1st Cir. 2007). As a sanction for its repeated actions, AWMR again requests that Defendants be ordered to immediately release the eight containers belonging to AWMR per the terms of the contract. *AWMR agrees to deposit with the Court $47.00 per metric ton of the material, as stated in the contract between the parties after weighing the metals, while this dispute is resolved.* This solution will not harm any of the parties, as the moneys will be deposited per the exact terms of the agreement and will be held by the Court, and again, is the exact remedy the parties agreed to per the contract.

B. Third parties harmed: Marine Asset, Intership and truckers

AWMR wishes to make clear, however, that this request comes as a result of the continued and illegal detention of the chassis leased by AWMR, where the metals are currently loaded, to which co-Defendant Ecoterra maliciously asserts that it has some right to and which CEMEX is illegally holding. To further evidence the immense problem this situation is causing and evidence the need for an immediate and prompt resolution, AWMR submits as *Exhibit 3* to this motion, a letter from the chassis company Marine Asset Management, Inc, wherein it states that will not lease any further chasses to AWMR as a result of co-Defendants' CEMEX and Ecoterra's illegal detention of the containers. As stated in a previous motion, this situation is seriously affecting AWMR's business, as it cannot move any materials, and it is even affecting third parties: the truckers who delivered the chasses to the CEMEX plant in Ponce must be the ones to return the chasses. In effect, then, besides harming AWMR, *CEMEX's hold-up of the containers has also further served to harm completely innocent parties in this case – the truckers who delivered the initial chasses and the lessor of the chasses*. *See Exhibit 3*. This situation effectively paralyzes AWMR's operations in Puerto Rico and continues to cause severe harm to its continued functioning and reputation.

WHEREFORE, Plaintiffs respectfully request that the Honorable Court **GRANT** the present motion in its entirety, to wit: that as a sanction, it **ORDER** the immediate release of the eight containers loaded with metal from the CEMEX site; that such containers be weighed before leaving the premises; that AWMR be allowed to deposit the corresponding amount in the Court using the $47.00 per metric ton agreed upon price, forthwith; and that it issue any further relief it deem just and proper under the law.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 28th day of September, 2007.

CERTIFICATION: I hereby certify that on this day, the present motion was filed the Court's CM/ECF system, which will notify all counsel of record in this case.

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